

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**TAMMY WILLIAMS,**

**Plaintiff,**

**VS.**

**MICHAEL J. ASTRUE,**  
**Social Security Commissioner,**

**Defendant.**

**4:09CV3116**

## ORDER

This matter comes before the court on the plaintiff's motion to extend time to file an appeal ([Filing No. 28](#)). On March 28, 2011, this court entered an order affirming the Commissioner's decision to deny the plaintiff disability insurance benefits. **See** [Filing No. 26](#). On the same date, the court entered judgment in favor of the Commissioner. **See** [Filing No. 27](#). In the plaintiff's letter dated May 16, 2011, the plaintiff states she would like to file an appeal to the Eighth Circuit Court of Appeals, but her legal counsel has withdrawn and she has not yet found substitute counsel. **See** [Filing No. 28](#). Further, the plaintiff states she seeks an extension of the deadline to appeal by sixty days, until July 25, 2011. ***Id.*** The plaintiff filed a letter from her previous counsel informing her she had until May 27, 2011, to file an appeal in the circuit court. ***Id.*** at 2.

Pursuant to the Federal Rules of Appellate Procedure a party may “appeal from a judgment by a magistrate judge in a civil case . . . in the same way as an appeal from any other district court judgment.” [Fed. R. App. P. 3\(a\)\(3\)](#). “An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4.” [Fed. R. App. P. 3\(a\)\(1\)](#). The contents of the notice of appeal must comply with Rule 3(c).<sup>1</sup> Additionally, “[u]pon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.” [Fed. R. App. P. 3\(e\)](#). The notice of appeal and docket fee for the Eighth Circuit Court of Appeals is \$455.00.

<sup>1</sup> Forms for filing a notice of appeal and for filing a motion to proceed *in forma pauperis*, that is without prepayment of filing fees, may be found on the court's website at [www.ned.uscourts.gov/forms/](http://www.ned.uscourts.gov/forms/).

Under Rule 4, “[w]hen the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.” [Fed. R. App. P. 4\(a\)\(1\)\(B\)](#). Moreover, the district court may extend the time to file a notice of appeal, except that “[n]o extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.” [Fed. R. App. P. 4\(a\)\(5\)\(A\), \(C\)](#). Under these rules, the plaintiff has timely filed her motion for an extension of time. However, this court may only grant the plaintiff an extension of thirty days, rather than the sixty days she requested. Upon consideration,

**IT IS ORDERED:**

1. The plaintiff’s motion to extend time to file an appeal ([Filing No. 28](#)) is granted, in part, and denied, in part.

2. The plaintiff shall have an extension of time until **June 27, 2011**, to file her notice of appeal in this case.

3. The Clerk of Court shall mail a copy of this order to the plaintiff at:

901 South Franklin Avenue, Apt. 116  
Hastings, NE 68901

DATED this 18th day of May, 2011.

BY THE COURT:

s/ Thomas D. Thalken  
United States Magistrate Judge